

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID LITMON, JR.,

No. C-10-3894 EMC

Plaintiff,

v.

EDMUND G. BROWN, Attorney General of  
California, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR COURT TO RESCIND  
ORDER**

**(Docket No. 50)**

Plaintiff David Litmon, Jr. has moved the Court to rescind its order of September 12, 2011, in which it granted Defendants' motion to strike the first amended complaint. According to Mr. Litmon, the order should be rescinded because it incorrectly stated that he did not file an opposition to the motion.

Mr. Litmon is correct that he filed an opposition. However, that opposition was not timely filed. *See* Civ. L.R. 7-3(a) (providing that an opposition must be filed and served not more than 14 days after the motion is filed and served). In any event, the Court has now considered the arguments made by Mr. Litmon in his opposition and finds none of them availing. For example, Mr. Litmon claims that Governor Brown signed and/or authorized California Penal Code § 290.012; however, that does not mean that the governor is responsible for its enforcement. Also, Mr. Litmon does not address in his opposition the basis on which other persons allegedly similarly situated received preferential treatment. Finally, contrary to what Mr. Litmon asserts, the arguments made by Defendants are entirely appropriate for consideration at the Rule 12(b)(6) phase rather than on

1 summary judgment. Only if a plaintiff pleads a facially plausible claim may he or she be permitted  
2 to proceed with the case.


3 Finally, the Court notes that Mr. Litmon has not been prejudiced to the extent that, in its  
4 September 12 order, the Court gave him an opportunity to file a second amended complaint which  
5 he has now done.

6 To the extent Mr. Litmon has asked for alternative relief – *i.e.*, that the September 12 order  
7 be amended to reflect that he did an opposition – the Court notes that its order here renders that  
8 relief moot. The Court acknowledges that Mr. Litmon did file an opposition but, as noted above, the  
9 opposition was not timely filed.

10 This order disposes of Docket No. 50.

11  
12 IT IS SO ORDERED.

13  
14 Dated: October 14, 2011

15  
16   
EDWARD M. CHEN  
United States District Judge

UNITED STATES DISTRICT COURT  
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DAVID LITMON, JR.,

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Plaintiff,

v.

**CERTIFICATE OF SERVICE**

EDMUND G. BROWN, Attorney General of  
California, *et al.*,

Defendants.

\_\_\_\_\_ /

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

**DAVID LITMON, JR.**  
32314 Ruth Court  
Union City, CA 94587

Dated: October 14, 2011

RICHARD W. WIEKING, CLERK

By:           /s/ Leni Doyle            
Leni Doyle  
Deputy Clerk